

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Petition of:)	
)	
Entravision Holdings, LLC)	MB Docket No. 17-306
)	
For Modification of the Television Market)	CSR-8944-A
For Station WJAL(TV), Silver Spring, Maryland)	
)	
Facility ID 10259)	
)	

To: The Secretary
Attn: Chief, Media Bureau

REPLY

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SUMMARY

In its Petition for Special Relief, Entravision Holdings, LLC demonstrated that, pursuant to the market modification factors contained in Section 614(h)(1)(C)(ii) of the Communications Act, the cable communities served by Comcast of Maryland, LLC, Comcast of Potomac, LLC, Comcast of Virginia, Inc. and Comcast of the District, LLC (collectively, “Comcast”) in the Washington, D.C. DMA must be added to the television market of Station WJAL(TV), Silver Spring, Maryland.

In response, Comcast attempts to reopen the already decided question of whether a party may undertake a market modification as part of it engaging in a channel sharing arrangement. In fact the Commission, in adopting the incentive auction process, specifically confirmed that channel sharing stations can be expected to make transmitter site moves that may result in cable operators adding or deleting those stations. The Commission determined that the market modification process would be the mechanism for achieving such results.

WJAL is entitled to have its removal from Comcast’s market reversed. It was a successful bidder in the recent Incentive Auction and it is now the sharee station in a channel sharing arrangement with Station WUSA(TV), Washington, D.C. Pursuant to this arrangement, WJAL has relocated its transmission facilities to the WUSA transmitter site and changed its community of license to Silver Spring, Maryland, thereby incurring a substantial investment in doing so.

More importantly, it has a robust market-wide signal for its specialty service and its carriage has only been objected to by Comcast, which is otherwise carrying all other full-service television stations in the immediate Washington, D.C. area. Based on the Station being licensed to Silver Spring, Maryland and its service to the Washington area, WJAL has established a clear

nexus with the service area where Comcast offers cable service. The long history of the cable statute and rules support the concept of achieving localism by requiring cable operators to mirror the availability of local television programming. There is no reason that WJAL's participation in a channel sharing arrangement with another television station already carried by Comcast does not have the nexus in order to be accorded market status on Comcast's Washington, D.C. area cable systems.

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REPLY

Entravision Holdings, LLC (“Entravision”), the licensee of Television Station WJAL(TV), Channel 9, Silver Spring, Maryland (Facility ID: 10259) (“WJAL” or the “Station”), by its attorneys, hereby replies to the Opposition¹ filed by Comcast² to Entravision’s Petition for Special Relief (“Petition”) seeking return of the Comcast Communities³ located in the Washington, D.C. Designated Market Area (“DMA”) to the Station’s market. The claims set forth in Comcast’s Opposition have little discernable relationship to the market modification process as it has long existed in Commission policy and practice and, instead, amount to a speculative, precedent-free Hail Mary by the dominant cable operator in the nation and the DMA, desperate to deny selectively

¹ Comcast’s pleading is also procedurally defective and should be dismissed. The pleading lacks the succinct summary and table of contents mandated by Section 1.49(b) and (c) and the verification called for by Section 76.6(a)(4).

² As set forth in the Petition, Entravision seeks carriage in cable communities served by the following Comcast entities, collectively referred to herein as “Comcast:” Comcast of Maryland, LLC; Comcast of Potomac, LLC; Comcast of Virginia, Inc.; and Comcast of the District, LLC.

³ The Comcast Communities are listed individually in the Petition.

carriage rights to a Station plainly entitled to them. As such, the Commission must reject Comcast's Opposition and grant the Petition. In support thereof, Entravision states as follows.

In its Opposition, Comcast advances two unavailing claims. First, Comcast warns that channel sharing arrangements are essentially matters of first impression and that the Commission should therefore tread carefully in determining channel sharing stations' carriage rights. Second, Comcast contends that WJAL is not entitled to must-carry rights in the Comcast Communities under a market modification analysis repurposed around Comcast's first claim. That is, Comcast would like the Commission to consider channel-sharing stations' carriage rights under a revised market modification framework better suited to Comcast's overarching interest in limiting its must-carry obligations. These claims will be shown herein to be wide of the mark.

Two formidable obstacles stand in Comcast's way. First, the Commission explicitly decided to apply its existing market modification framework to potential changes in the carriage rights of channel sharing stations,⁴ and second, precedent decided under that framework clearly supports inclusion of the Comcast Communities in WJAL's market. Over the course of numerous rulemaking proceedings, the Commission proposed specific policies concerning channel sharing arrangements and the carriage rights of

⁴ In *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014) ("*Incentive Auction R&O*"), the Commission indicated that the carriage rights of spectrum sharing stations would not automatically change as a result of new channel sharing arrangements, but that a channel sharee "may seek to add communities to its market which it can now reach from its new location..." under the Commission's traditional market modification analysis. "A station's carriage rights will not be expanded or diminished through [the channel sharing/relocation] process, although its ability to exercise these rights may change based upon the facts of its specific channel sharing arrangement." *Id.* at ¶ 709.

channel sharing stations and solicited comments from industry stakeholders and other interested parties. Based on these comments, the Commission reevaluated and refined its policies before adopting them in their final and non-reviewable form. Obviously, the alarmist claims Comcast is advancing now should have been raised by Comcast at that time in order to be considered fully. The substantial precedent supporting Entravision's Petition and the precedent-free spin of Comcast's Opposition exposes Comcast's claims for what they are: flimsy distraction and opportunism, submitted well behind the rulemaking stage when there is no basis upon which they can or should be considered. After years of deploying the Commission's traditional market modification framework to deny carriage to the Station,⁵ then licensed to a community on the northwestern border of the DMA, Comcast is now scrambling for a new framework to deny carriage rights to that same Station that has responded to Comcast's distance and coverage concerns and relocated itself to the heart of the DMA. The Commission must reject Comcast's back door effort to remake Commission policy and process and to continue to oppose carriage of WJAL by Comcast, even when Comcast's concerns have been addressed by WJAL.

Under its revisionist analysis, Comcast insists that WJAL's signal coverage and uncontested geographic nexus to all of the Comcast Communities do not entitle the Station to carriage rights. In this regard, Comcast does not dispute the Station's improved signal coverage from its new transmitter site in the heart of Washington, D.C., or the Station's geographic proximity to the Comcast Communities from its new community of license, Silver Spring, Maryland, which abuts Washington, D.C.

⁵ *Comcast Cablevision of the District, et al.*, 18 FCC Rcd 16510 (MB 2003).

As case after case has demonstrated, Comcast is wrong. To take just one example, in a 2004 case in which Comcast succeeded in securing removal of certain cable communities from another station's market, the Media Bureau nonetheless required Comcast to carry the station in Comcast's geographically proximate communities to which the station provided a signal, finding that geographic proximity and signal coverage evidenced an intent to serve the communities in question and were the considerations of paramount importance in the decision-making process.⁶ Indeed, under its traditional market modification analysis, the Commission has routinely recognized that geographic proximity and signal coverage are the best measures of the scope of a station's market and establish the critical nexus between the station and the market. As correctly noted by another cable operator in the DMA, CoxCom, Inc. ("CoxCom"): "the Commission has long recognized that Grade B contour coverage, in the absence of other determinative market facts, is an efficient tool to adjust market boundaries because it is a sound indicator of the economic reach of a particular television station's signal."⁷ According to Cox, "unless other factors confirm market separations, the Commission

⁶ *Comcast Cable Communities, Inc.*, 19 FCC Rcd 5245, ¶ 17 (MB 2005) ("Given the station's coverage and the station's closer geographic proximity, it appears that it is [the station's] intent to serve these communities. As such, carriage of the station's signal is reasonable and appropriate under the [Communications Act] and the Commission's rules").

⁷ *CoxCom, LLC*, 30 FCC Rcd 10978, ¶ 11 (MB 2015). *See also Market Modifications and the New York Area of Dominant Influence Petitions for Reconsideration and Applications for Review*, 12 FCC Rcd 12262, 12267, ¶ 10, 12271, ¶ 17 (1997) ("[G]rade B coverage, in the absence of other determinative market facts . . . is an efficient tool to adjust market boundaries because it is a sound indicator of the economic reach of a particular television station's signal").

logically views the economic market of a broadcast station to be the area in which consumers receive the station using a home antenna.”⁸

Comcast does not cite to a single Commission precedent in support of its claims downplaying signal coverage and geographic proximity because there is no instance where the Commission has altered the market where a station was a truly local one and had a signal of equal coverage to the dominant broadcasters in the market. It is only the supposed novelty of channel sharing arrangements that enable Comcast to opportunistically attempt to make this argument.⁹

The same goes for Comcast’s effort to characterize WJAL’s current lack of specifically local programming as somehow disqualifying. Comcast does not cite a single case in support of this claim,¹⁰ and, instead, attempts to discredit Entravision by claiming that Entravision misrepresented the nature of its programming. In its Petition, Entravision lists as Station programming the general interest programming that aired on the Station for a number of years. However, shortly before filing the Petition,

⁸ *Id.*

⁹ Interestingly, Comcast is selective in how it treats carriage requests from television stations, including distant television stations. In the DMA, Comcast carries Station WMDE, Dover, Delaware (83 air miles from Washington, D.C.), but did not carry WJAL as an Hagerstown, Maryland stations (63 air miles from Washington, D.C. As for WMDE, the Commission has questioned that Station’s entitlement to carriage in the DMA, but Comcast has not. *CoxCom, LLC, supra* at ¶ 195. In other market modification proceedings, such as one involving distributed technology service, no cable operator objected to a market restoration request. *KAZN-TV Licensee, LLC*, 30 FCC Rcd 8126 (MB 2015)

¹⁰ On the contrary, in *KAZN-TV Licensee, LLC*, *supra*, the Commission restored communities to KILM’s market based almost entirely on the station’s improved signal coverage, as the Commission found no local programming, no viewership, and some historical carriage. The Commission credited KILM’s investment in its DTS facility and its promise to improve its local programming as evidencing “a sincere desire to serve the communities,” and granted KILM’s market modification request on those grounds.

Entravision was required to change the Station's programming due to the expiration of a number of the Station's programming contracts.

WJAL currently broadcasts LATV network programming on its primary stream (this LATV programming airs on a multicast stream, not, as Comcast implies, the primary stream, of Station WMDO-CD, Washington, D.C., an Entravision station; WMDO-CD broadcasts UniMás programming on its primary stream). Entravision does not wish to disclose any more particulars of the contractual arrangements between the parties here or the bases upon which Comcast is carrying a Class A television station's primary and multicast channels, given the proprietary nature of various matters informing the decision, but if the Commission seeks more such information, it can call upon Comcast, which has raised the matter, to provide it pursuant to the confidentiality provisions of Section 76.9 of the Commission's Rules.

Significantly, for purposes of this proceeding, Entravision did not claim that WJAL's prior programming was locally-targeted to the Comcast Communities. However, Entravision wishes to make note that the LATV network programming, which contains both English and Spanish language content, is well-suited to the significant Latino population of the DMA¹¹, and Entravision is committed to including superior local programming on the Station, but such programming requires substantial resources, resources typically unavailable to a Station that does not have carriage rights on the leading cable operator in the DMA.

Comcast extends its precedent-free approach in the Opposition to other market modification factors as well. Comcast's complaint that Entravision reduces the market

¹¹ According to the United States Census Bureau, the Latino population of Montgomery County, Maryland, where Silver Spring is located, is 19.1% Latino.

modification process to a single factor affair (signal coverage/geographic proximity) is pretty bold, given Comcast's failure to consider any factor at all within the context of actual market modification decisions. In its Petition, Entravision provides a detailed analysis of Commission precedent with respect to each statutory market modification factor, arguing that such factors should be weighed in WJAL's favor, or, where appropriate, given little or no weight in accordance with well-established Commission precedent.¹² Comcast does not answer Entravision's showing with argument or citation, only with the repeated claim that Entravision cannot be right, which is to say that the Commission's existing market modification framework must be wrong. For instance, Comcast analyzes historical carriage at greater length than any factor other than signal coverage/local programming, and yet fails to address Commission precedent, cited by Entravision, crediting historical carriage to a station when co-located stations have been carried by the cable operator in question.¹³ In the instant case, Comcast carries WUSA, WJAL's channel sharing partner, throughout all of its cable systems in the Washington DMA. As noted in the Petition, WJAL now broadcasts using WUSA's transmitter in Washington, D.C., at the same transmitter site from which Station WJLA-TV, Washington, D.C., broadcasts as well. In fact, as documented in the Petition, Comcast

¹² As argued in the Petition, under Commission precedent, the third factor, consumers' access to in-state broadcast signals, and the fourth factor, the local service provided by other stations currently carried by Comcast, should simply drop out of the market modification analysis.

¹³ See *Tennessee Broadcasting Partners*, 23 FCC Rcd 3928, ¶ 10 (MB 2008) (considering carriage of a co-located station in a particular community as evidence of the petitioner station's nexus with that community, and noting that petitioner station's lack of carriage put it at a competitive disadvantage in the market). See also *WSBS Licensing, Inc.*, 32 FCC Rcd 4159, ¶ 7 (MB 2017) (weighing historical carriage factor in favor of restoring communities to the market of Station WSBS-TV, Key West, Florida based in part on carriage of co-located Station WGEN-TV, Key West, Florida in subject communities).

carries every full-power television station broadcasting from a transmitter site located within the District of Columbia and its immediate surrounding areas.¹⁴ While Comcast might wish such facts had little bearing on the market nexus between WJAL and the Comcast Communities, the Commission's market modification decisions clearly indicate otherwise.

Comcast's sole effort to distinguish recent market modification decisions bolstering WJAL's case rests on bad faith more than legal analysis. In its Petition, Entravision cites *KAZN-TV Licensee, supra*¹⁵ and *KJLA, LLC*¹⁶ as examples of recent proceedings in which the Commission restored once-deleted communities to a station's market based upon substantial gains in signal coverage. Comcast attempts to distinguish these cases by insisting that the Commission rewarded instances of broadcaster investment (construction of a new DTS transmission facility and a transmitter site relocation, respectively) absent from the instant proceeding. Comcast's would-be distinction cannot pass the laugh test. If Entravision's negotiation of a channel sharing arrangement with WUSA is not an investment in WJAL's future, what is it? WUSA, like every other sharer in a channel sharing arrangement, is not sharing its spectrum with WJAL for free. As with the cases relied on by Comcast, the "radical changes" in

¹⁴ The Commission should also take cognizance of the fact that CoxCom, which also had WJAL excluded from its market elected not to oppose the market modification request in MB Docket No. 17-307. This further evidences WJAL's entitlement to carriage in the market.

¹⁵ 30 FCC Rcd 8126 (restoring communities to KILM's market based almost entirely on the station's improved signal coverage, as the Commission was unable to find any local programming or viewership and only some historical carriage, while largely ignoring Barstow's position on the periphery of the Los Angeles DMA).

¹⁶ 26 FCC Rcd 12652 (MB 2011) (finding KJLA's deficits in historical carriage and viewership offset by its "robust signal coverage" gains and the fact that cable operators carried "every other station co-located with KJLA at the Mount Wilson antenna farm").

WJAL's circumstances – its expenditures in furtherance in the channel sharing arrangement, its new community of license, its new transmitter site and equipment, and its newly “robust signal coverage” of the Comcast Communities – are the result of Entravision's investments in the Station, investments warranting the return of the Comcast Communities to the Station's market.

In fact, Comcast's claim that the *KJLA, LLC* is distinguishable is misplaced and that case provides ample precedent for granting the instant Petition. The critical factors in *KJLA, LLC* include the relocation of a transmitter site from a distant location to the principal transmitter site for the market, the investment in undertaking the relocation, the coverage of the community with a signal equal to other stations, carriage by the cable operator of all other local full-service signals, and the “specialty service” LATV network programming serving the Latino population.¹⁷ WJAL is in full accord with these same factors including carriage of LATV network programming that serves the Latino population. Thus, the Commission should conclude in the same manner that it did in *KJLA, LLC*, that WJAL's compliance with the applicable factors and a robust signal carriage and recent investment in serving a significant demographic in the DMA entitles the Station to its requested relief.

Finally, Comcast's prediction that an army of channel-sharing stations is ready to descend on the Commission's market modification process to extract undeserved must-carry rights from cable operators is groundless. As noted above, the Commission

¹⁷ The Commission has consistently held that specialty stations have limited audiences which have weaker audiences and less historic carriage, but must be accommodated in order to avoid being otherwise excluded by cable operators. *KJLA, LLC, supra* at 12660 and n. 54. *See also Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable*, 22 FCC Rcd 13642, 13649 (MB 2007).

adopted its channel sharing policies through the course of numerous rulemaking proceedings,¹⁸ and these policies, no less than reality on the ground, refute Comcast's hyperbolic claims. Comcast is the largest cable operator in the country. If any cable operator were experiencing a deluge of market modification and must carry claims from channel sharing stations, it would be Comcast. And, surely, if Comcast were experiencing a deluge of market modification petitions and must-carry claims from channel sharing stations, it would have filled its Opposition with concrete details instead of empty, speculative claims.

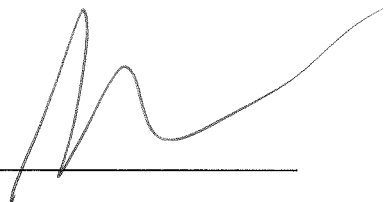
In sum, Comcast's Opposition is a meritless attempt to beat its carriage obligations by reinventing the Commission's market modification process, the same process Comcast relied on for years to deny carriage to broadcast television stations like WJAL. Under longstanding Commission precedent, WJAL's new broadcast service in the heart of the Washington, D.C. DMA has a clear market nexus with the Comcast Communities, and the Comcast Communities properly belong in the Station's market. Accordingly, Entravision respectfully requests that the Commission deny Comcast's Opposition, grant Entravision's Petition and modify the Station's market to include the cable communities served by Comcast in the Washington, D.C. DMA.

¹⁸ See, e.g., *Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, Report and Order, 32 FCC Rcd 2637 (2017).

Respectfully submitted,

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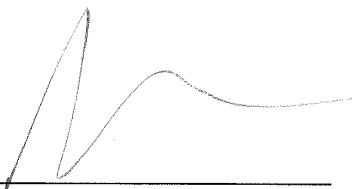
Dated: December 14, 2017

4844-6088-5592.2

CERTIFICATE OF SERVICE

I, Barry A. Friedman, hereby certify that I have served on this 14th day of December, 2017, a copy of the foregoing **Reply** on the following party by first-class mail, postage pre-paid:

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A handwritten signature in black ink, appearing to read 'Barry A. Friedman', is written over a horizontal line.

Barry A. Friedman